

MINUTES

NEVADA STATE BOARD OF OPTOMETRY REGULAR TELEPHONE MEETING

November 16th, 2005
Office of the Nevada State Board of Optometry
1000 East William
Suite 109
Carson City, Nevada

Dr. Alleman asked for public comment. There was no public comment.

A regular telephone meeting of the Nevada Board of Optometry was called to order by Board President, Kurt G. Alleman, O.D., at 8:04 a.m. on November 16th, 2005, at the office of the Board of Optometry, 1000 East William, Suite 109, Carson City, Nevada.

Identifying themselves as participating via telephone were:

Kurt G. Alleman, O.D., Board President
Brad C. Stewart, O.D., Board Member
Jack Sutton, O.D., Board Member
George Bean, Board Member
Diana Hegeduis, Chief Deputy Attorney General

Participating and present at the Board office were:

Judi Kennedy, Executive Director
Hal Taylor, Esq.
Farnaz Khankhanian, O.D.
Jennifer Peterson, O.D.
Jeanette Belz, Nevada Ophthalmological Society

The Minutes of the September 23rd, 2005, meeting were presented for approval. Dr. Stewart moved the Minutes be approved as drafted. Dr. Sutton seconded the motion. The vote was unanimous.

Agenda Item 3. The Board considered correspondence from Isaac J. Hearne, M.D.

Dr. Alleman cited as Dr. Hearne's concern, situations involving optometrists referring patients presenting with eye disease to emergency rooms. Dr. Alleman continued stating he believed there should be an ophthalmological referral or consult instead. Dr. Sutton asked if Dr. Hearne had filed a complaint. Ms. Kennedy responded that he had not. Dr. Alleman noted Ms. Kennedy had included an item in the Board's 2005 Newsletter encouraging optometrists to obtain, when deemed appropriate, an ophthalmological referral and/or consult, in lieu of referring patients presenting with eye disease to an emergency room. The Board directed Ms. Kennedy to correspond with Dr. Hearne thanking him for his letter, and furnishing him a copy of the 2005 Newsletter.

Agenda Item 4. Dr. Alleman stated the Board had received a copy of the application for licensure of Dr. Farnaz Khankhanian. Dr. Alleman stated, for the record, he had received written communication directly from Hal Taylor, Esq., Dr. Khankhanian's attorney. Dr. Alleman advised the communication remained closed and sealed. In response to an inquiry from Dr. Alleman, Dr. Sutton acknowledged he too had received written communication directly from Mr. Taylor, but that he had not opened the communication. Ms. Hegeduis asked if any member of the Board had had any conversation with Mr. Taylor regarding the case before it. All members of the Board stated for the record stated they had not. Mr. Taylor apologized, stating he understood sending the written communication directly to the members was improper, and that he was only trying to ensure the documents were received.

Dr. Alleman observed that Dr. Khankhanian had not attained the statutorily required score of 75 or higher on each section of the examination of the National Board of Examiners in Optometry, and therefore was not qualified for licensure in Nevada. Dr. Alleman said he had reviewed the documents submitted by Mr. Taylor on behalf of Dr.

Khankhanian, which had been forwarded to him from the Board office. Dr. Alleman continued stating by statute a score requirement had been set, that Dr. Khankhanian had not met that requirement, and that absent a change in the statute, Dr. Khankhanian must achieve the required score.

Mr. Taylor responded, stating he was not arguing that the National Board examination should not be the qualifying examination for licensure in Nevada. Mr. Taylor continued contending the he and his client believed the language of the statute to be ambiguous in its use of the words “area” and “section,” that the length of time that had elapsed since Dr. Khankhanian had taken the sections she had not passed should be considered, and that he believed the Board had the opportunity to consider background and experience when applying the statutory requirements for licensure.

Ms. Hegeduis directed the Board’s attention to NRS 636.150 which sets out five requirements which must be met by individuals applying for licensure in Nevada, noting the words “must” and “and” mean the individual has to meet all five requirements. Continuing, Ms. Hegeduis advised the Board it need only determine the language of the statute is clear and unambiguous, and that the sections not passed by Dr. Khankhanian are included in the scope of the examination as outlined by NRS 636.185. Ms. Hegeduis concluded by stating if the Board considers NRS 636.150, NRS 636.185, and NRS 636.190 as they apply in this case, it must apply the law as written.

Dr. Stewart interjected he was currently on the Internet, at the web site of the National Board of Examinations in Optometry, and that despite the passage of time since Dr. Khankhanian had taken the sections of the exam in which she failed to achieve the statutorily required score, the sections failed by Dr. Khankhanian were still included in the exam. Mr. Bean asked if Dr. Khankhanian need only pass the sections in which she had

not previously achieved a score of 75 or higher. Dr. Alleman responded in the affirmative.

Dr. Khankhanian stated she believed she would not be able to identify the individual questions that applied to the sections she had failed. Dr. Alleman replied he believed with her experience and background, Dr. Khankhanian would have no problem retaking and passing the failed sections.

Dr. Sutton moved Dr. Khankhanian's application for licensure be denied based on her failure to achieve the statutorily required test scores. Mr. Bean seconded the motion. The vote was unanimous. Ms. Hegeduis stated she would be preparing a written order.

Agenda Item 5. The complaint of Marcia E. Koben vs. Craig L. Kuntz, O.D. Ms. Kennedy advised the Board copies of Ms. Koben's medical records had not been received from Dr. Kuntz. Dr. Stewart moved the matter be continued for consideration at the Board's next regular meeting. Dr. Sutton seconded the motion. The vote was unanimous.

Agenda Item 6. Noting the presence of Dr. Jennifer Peterson, Dr. Alleman directed the Board's attention to Tab C of the Agenda Item. Dr. Alleman noted Dr. Peterson had submitted copies of her most recent tax return. The Board turned to the Agreement produced by Dr. Peterson. During discussion, the Board noted under the terms of the agreement Dr. Peterson was being paid, by an ophthalmologist, a set sum per day, which constitutes employment. Dr. Peterson stated she had discussed compliance with Chapter 636 with the ophthalmologist with whom she works, and that he had offered to sell her part of the practice, which would make her part owner, not an employee. Dr. Alleman stated it was his understanding such an arrangement would be compliant with the statutes. Dr. Stewart suggested Dr. Peterson should have any proposed agreement reviewed by an attorney. Dr. Stewart moved the draft response letter be sent to Dr. Peterson. Dr. Sutton seconded the motion. The vote was unanimous

Tab A. Dr. Stewart moved the draft response letter be sent to Dr. Afifi. Dr. Sutton seconded the motion. The vote was unanimous

Tab B. Dr. Stewart moved the draft response letter be sent to S. Craig Stone III, Esq., the attorney for Drs. Jensen, Murray and Orton, and that if the documents were not received within the required time period, a subpoena issue. Dr. Sutton seconded the motion. The vote was unanimous

Tab D. Dr. Alleman stated the revised agreement between Dr. Schwartz and Ophthalmic Associates appears to be compliant. Dr. Stewart moved the draft response letter be sent to Mr. Testolin, the attorney for Dr. Schartz. Dr. Sutton seconded the motion. The vote was unanimous.

Tab E. Dr. Alleman summarized the documents produced by Dr. Singleton, noting he had not produced a copy of an agreement. Dr. Stewart offered that if Dr. Singleton did not produce the agreement requested in the draft response, a subpoena should issue for the production of the document. Dr. Sutton concurred. Dr. Stewart moved the draft response letter be revised to include a statement that failure to produce the agreement would result in the issuance of a subpoena. Mr. Bean seconded the motion. The vote was unanimous.

Item 7. The Board reviewed the report of Southern California College of Optometry regarding its extended clinical facility at 2110 East Flamingo Road, Suite 210, Las Vegas. The Board determined no further action need be taken.

Item 8. Mr. Bean moved the renewal fees for the 2006-07 license year remain the same as the fees set for the 2005-06 license year. Dr. Sutton seconded the motion. The vote was unanimous.

The Board suggested two changes to the Board's 2005 Newsletter.

The Board approved Ms. Kennedy's attendance at the FARB convention in February,

2006.

Dr. Alleman asked for public comment. There was no public comment.

The Board scheduled a telephone meeting for Friday, March 10th, 2006.

Dr. Sutton moved the meeting adjourn. Mr. Bean seconded the motion. The meeting adjourned at 9:10 a.m.